

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TWIN CITY FIRE INSURANCE  
COMPANY

One Hartford Plaza  
Hartford, CT 06155; and

HARTFORD CASUALTY INSURANCE  
COMPANY

One Hartford Plaza  
Hartford, CT 06155,

Plaintiffs,

v.

Case No. 8:22-cv-93

GATES HUDSON & ASSOCIATES, INC.  
3020 Hamaker Court, Suite 301  
Fairfax, VA 22031

Serve on:

John B. Raftery, Esquire  
7501 Wisconsin Avenue  
Suite 1000W  
Bethesda MD 20814;

ANDRE FERRELL  
16032 English Oaks Avenue  
Bowie, MD 20716  
(Prince George's County);

DANIELLE SAMUELS  
4812 Woodford Lane  
Upper Marlboro, MD 20772  
(Prince George's County);

WAYNE PADMORE, individually and as  
next friend of minors K.P., Z.P., and T.P.  
5306 Trent Street  
Clinton, MD 20735  
(Prince George's County);

ELIZABETH PADMORE, individually and  
as next friend of minors K.P., Z.P., and T.P.  
5306 Trent Street  
Clinton, MD 20735  
(Prince George's County);

ERICA BAKER  
3529 Terrace Drive, Unit E  
Suitland, MD 20746  
(Prince George's County); and

GARY YOUNG  
3529 Terrace Drive, Unit C  
Suitland, MD 20746  
(Prince George's County),  
Defendants.

### COMPLAINT FOR DECLARATORY RELIEF

Twin City Fire Insurance Company ("Twin City") and Hartford Casualty Insurance Company ("Hartford Casualty") (collectively, "Hartford"), file this complaint for declaratory relief with respect to the lawsuit captioned *Wayne Padmore et al. v. Atlas West End Silver Hill, LLC et al.*, Case No. CAL20-14812, in the Circuit Court for Prince George's County ("Underlying Lawsuit"),<sup>1</sup> and state as follows:

#### Parties

1. Twin City is an Indiana corporation with its principal place of business in Hartford, Connecticut. It is a citizen of Indiana and Connecticut.
2. Hartford Casualty is an Indiana corporation with its principal place of business in Hartford, Connecticut. It is a citizen of Indiana and Connecticut.
3. Gates Hudson & Associates ("Gates Hudson") is a Virginia corporation with its principal place of business in Fairfax, Virginia. It is a citizen of Virginia.
4. Andre Ferrell is a Maryland citizen residing in Prince George's County, Maryland.

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<sup>1</sup> In another case pending in this Court, *American Guarantee and Liability Insurance Co. v. Capital Boiler Works, Inc. et al.*, No. 1:22-cv-00030-DLB, a different insurer seeks declaratory relief regarding the Underlying Action.

5. Danielle Samuels is a Maryland citizen residing in Prince George's County, Maryland.

6. Wayne Padmore and Elizabeth Padmore are Maryland citizens residing in Prince George's County. They are the parents of minor children K.P., Z.P., and T.P., who are Maryland citizens residing in Prince George's County. This pleading refers to the parents and children collectively as "the Padmores."

7. Erica Baker is a Maryland citizen residing in Prince George's County, Maryland.

8. Gary Young is a Maryland citizen residing in Prince George's County, Maryland.

9. This Complaint names the Padmores, Ms. Baker, and Mr. Young (collectively, "the Underlying Plaintiffs") to the extent they assert an interest in the requested declaration. Hartford will dismiss them if they agree to be bound by the judgment in this case.

### **Jurisdiction**

10. Complete diversity of citizenship exists between the Plaintiffs, who are citizens of Indiana and Connecticut, and Defendants, who are citizens of Virginia and Maryland.

11. The amount in controversy is in excess of \$75,000, exclusive of interest and costs, because Hartford seeks declaratory relief with respect to insurance coverage for a lawsuit that seeks damages in excess of \$75,000.

12. The Court therefore has subject-matter jurisdiction under 28 U.S.C. § 1332.

### **Facts**

#### **The Hartford Policies**

13. Twin City issued to Gates Hudson a Special Multi-Flex Policy, number 20 UUN IB5054 Policy Term, effective January 1, 2019 to January 1, 2020 ("Twin City Policy"). A certified copy of the Twin City Policy is attached as **Exhibit A**.

14. The Twin City Policy's commercial general liability ("CGL") insuring agreement provides:

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

15. The Twin City Policy's CGL coverage part defines "insured" to include Gates Hudson's employees "only for acts within the scope of their employment by [Gates Hudson] or while performing duties related to the conduct of [Gates Hudson's] business."

16. The Twin City Policy's CGL coverage part includes an Absolute Pollution Exclusion, Form HC 21 23 10 01, pursuant to which the policy does not apply to

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured ... [or]
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations[.]

17. The Twin City Policy's CGL coverage part defines "pollutants" as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed."

18. Hartford Casualty issued to Gates Hudson an Umbrella Liability Policy, number 20 RHU IB4737, effective January 1, 2019 to January 1, 2020 ("the Hartford Casualty Policy"). A certified copy of the Hartford Casualty Policy is attached as **Exhibit B**.

19. The Hartford Casualty Policy's insuring agreement provides:

We will pay those sums that the insured becomes legally obligated to pay as “damages” in excess of the “underlying insurance”, or of the “self-insured retention” when no “underlying insurance” applies, because of “bodily injury”, or “property damage” to which this insurance applies caused by an “occurrence”.

20. The Hartford Casualty Policy defines “insured” to include Gates Hudson’s employees “[o]nly for acts within the scope of their employment by [Gates Hudson] or while performing duties related to the conduct of [Gates Hudson’s] business, and only if they “are insureds under ‘underlying insurance’ with limits of liability no less than stated in the Schedule of Underlying Insurance Policies, subject to all the coverage terms, conditions and limitations of such ‘underlying insurance.’”

21. The Hartford Casualty Policy incorporates an exclusion under which the insurance does not apply to:

Any obligation:

- a.** To pay for the cost of investigation, defense or settlement of any claim, or suit against any insured alleging actual or threatened injury or damage of any nature or kind to persons or property which arises out of or would not have occurred but for the pollution hazard; or
- b.** To pay any "damages", judgments, settlements, loss, costs or expenses that may be awarded or incurred:
  - i.** By reason of any such claim or suit or any such injury or damage; or
  - ii.** In complying with any action authorized by law and relating to such injury or damage.

As used in this exclusion, pollution hazard means an actual exposure or threat of exposure to the corrosive, toxic or other harmful properties of any solid, liquid, gaseous or thermal:

- a.** Pollutants;
- b.** Contaminants;
- c.** Irritants; or
- d.** Toxic substances;

Including:

Smoke;

Vapors;

Soot;

Fumes;  
Acids;  
Alkalis;  
Chemicals, and  
Waste materials consisting of or containing any of the foregoing. Waste includes materials to be recycled, reconditioned or reclaimed.

22. The Twin City Policy and the Hartford Casualty Policies are governed by Virginia law.

The Underlying Lawsuit

23. In the Underlying Lawsuit, the Padmores, the Underlying Plaintiffs sue Gates Hudson, Mr. Ferrell, and Ms. Samuels, among other defendants. A copy of the operative complaint in the Underlying Lawsuit, as submitted to the Court in No. 1:22-cv-00030-DLB, is attached as **Exhibit C**.

24. The Underlying Plaintiffs allege that they sustained bodily injury at an apartment complex (“the Property”) for which Gates Hudson served as property manager, with Mr. Ferrell and Ms. Samuels acting as its authorized employees.

25. The Underlying Plaintiffs allege that the cause of their injuries was carbon monoxide from the Property’s hot water heater, resulting from Gates Hudson’s operations at the Property.

26. Gates Hudson, Mr. Ferrell, and Ms. Samuels requested a defense from Hartford for the Underlying Lawsuit.

27. Hartford has paid to defend Gates Hudson, Mr. Ferrell, and Ms. Samuels under the Twin City Policy, subject to a complete reservation of rights to deny coverage under the Twin City Policy and the Hartford Casualty Policy (collectively, “the Hartford Policies”).

**Count I: Declaratory Relief as to Pollution Exclusions**

28. Hartford incorporates by reference all foregoing allegations of this pleading.

29. The pollution exclusions in the Hartford Policies preclude any duty to defend or indemnify Gates Hudson, Mr. Ferrell, and Ms. Samuels in the Underlying Lawsuit.

30. An actual and justiciable controversy exists whether the pollution exclusions bar coverage for Gates Hudson, Mr. Ferrell, and Ms. Samuels in the Underlying Lawsuit.

WHEREFORE, Hartford requests that the Court enter judgment declaring whether the pollution exclusions in the Hartford Policies bar coverage for Gates Hudson, Mr. Ferrell, and Ms. Samuels in the Underlying Lawsuit.

Respectfully submitted:

/s/ Steven M. Klepper

Ezra S. Gollogly (#28088)

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*Counsel for Twin City Fire Insurance Company and  
Hartford Casualty Insurance Company*

Dated: January 13, 2022